

Assembly Bill No. 3040

CHAPTER 1139

An act to amend Sections 20636 and 20816 of, and to add Sections 20096.3 and 21063 to, the Government Code, relating to retirement.

[Approved by Governor September 30, 2002. Filed
with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3040, Committee on Public Employees, Retirement and Social Security. Retirement.

(1) The Public Employees' Retirement Law provides for the election of 6 members of the Board of Administration of the Public Employees' Retirement System at elections conducted by the board.

This bill would provide that if an incumbent member of that board, as specified, does not deliver his or her completed nomination documents to the election coordinator for reelection by the applicable filing deadline, the filing deadline for otherwise eligible candidates for the seat is extended by 10 days after the filing deadline.

(2) The Public Employees' Retirement Law requires contributions to the retirement fund based on compensation earnable by a member, which includes the member's payrate and special compensation, as specified. "Payrate" is defined, for members other than state members, as the normal monthly rate of pay or base pay of the member, as specified.

This bill would include in that definition of "payrate" any amount deducted from a member's salary for participation in a deferred compensation or specified retirement plan, a money purchase pension plan, or a flexible benefits program.

(3) Existing law authorizes contracting agencies of the Public Employees' Retirement System who have a specified level of assets to have employer assets applied to satisfy all member contributions.

This bill would clarify that a transfer of assets may not be made unless the member contributions of each member in a membership classification, for a period of at least one month and not more than one year, are satisfied thereby.

(4) Existing law requires the Board of Administration of the Public Employees' Retirement System to provide for conducting structured preretirement information seminars.

This bill would additionally require a meeting between a member and his or her employer to provide the member with oral and written

information regarding his or her compensation earnable, as specified, if requested by the member.

The people of the State of California do enact as follows:

SECTION 1. Section 20096.3 is added to the Government Code, to read:

20096.3. If an incumbent member of the board, holding a board seat described in subdivision (g) of Section 20090, does not deliver his or her completed nomination documents to the election coordinator for reelection by the applicable filing deadline for candidates for the seat, any otherwise eligible person other than the person who was the incumbent on the filing deadline shall have until 10 days after the filing deadline to file nomination documents for the same office. This section is not applicable if there is no incumbent eligible to be elected or if the notice of election states that the incumbent does not intend to be a candidate for reelection.

SEC. 2. Section 20636 of the Government Code is amended to read:

20636. (a) “Compensation earnable” by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

(b) (1) “Payrate” means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. “Payrate,” for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(2) “Payrate” shall include any amount deducted from a member’s salary for any of the following:

(A) Participation in a deferred compensation plan.

(B) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(C) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(D) Participation in a flexible benefits program.

(3) The computation for any leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence.

(4) The computation for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in state service.



(c) (1) Special compensation of a member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

(4) Special compensation may include the full monetary value of normal contributions paid to the board by the employer, on behalf of the member and pursuant to Section 20691, if the employer's labor policy or agreement specifically provides for the inclusion of the normal contribution payment in compensation earnable.

(5) The monetary value of any service or noncash advantage furnished by the employer to the member, except as expressly and specifically provided in this part, is not special compensation unless regulations promulgated by the board specifically determine that value to be "special compensation."

(6) The board shall promulgate regulations that delineate more specifically and exclusively what constitutes "special compensation" as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 et seq. of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

(7) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined to be special compensation.

(d) Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.



(e) (1) As used in this part, “group or class of employment” means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. One employee may not be considered a group or class.

(2) Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

(f) As used in this part, “final settlement pay” means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with, or in anticipation of, a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay.

(g) (1) Notwithstanding subdivision (a), “compensation earnable” for state members means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. The computation for any absence of a member shall be based on the compensation earnable by him or her at the beginning of the absence and for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in that state service.

(2) Notwithstanding subdivision (b), “payrate” for state members means the average monthly remuneration paid in cash out of funds paid by the employer to similarly situated members of the same group or class of employment, in payment for the member’s services or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. “Payrate” for state members shall include:

(A) Any amount deducted from a member’s salary for any of the following:

(i) Participation in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6.

(ii) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.



(iii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(iv) Participation in a flexible benefits program.

(B) Any payment in cash by the member's employer to one other than an employee for the purpose of purchasing an annuity contract for a member under an annuity plan that meets the requirements of Section 403(b) of Title 26 of the United States Code.

(C) Employer "pick up" of member contributions that meets the requirements of Section 414(h)(2) of Title 26 of the United States Code.

(D) Any disability or workers' compensation payments to safety members in accordance with Section 4800 of the Labor Code.

(E) Temporary industrial disability payments pursuant to Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

(F) Any other payments the board may determine to be within "payrate."

(3) Notwithstanding subdivision (c), "special compensation" for state members shall mean all of the following:

(A) The monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry, and other advantages of any nature furnished to a member by his or her employer in payment for the member's services.

(B) Any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential.

(C) Compensation for uniforms, except as provided in Section 20632.

(D) Any other payments the board may determine to be within "special compensation."

(4) Neither "payrate" nor "special compensation" for state members includes any of the following:

(A) The provision by the state employer of any medical or hospital service or care plan or insurance plan for its employees (other than the purchase of annuity contracts as described below in this subdivision), any contribution by the employer to meet the premium or charge for that plan, or any payment into a private fund to provide health and welfare benefits for employees.

(B) Any payment by the state employer of the employee portion of taxes imposed by the Federal Insurance Contribution Act.

(C) Amounts not available for payment of salaries and that are applied by the employer for the purchase of annuity contracts including

those that meet the requirements of Section 403(b) of Title 26 of the United States Code.

(D) Any benefits paid pursuant to Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6.

(E) Employer payments that are to be credited as employee contributions for benefits provided by this system, or employer payments that are to be credited to employee accounts in deferred compensation plans. The amounts deducted from a member's wages for participation in a deferred compensation plan may not be considered to be "employer payments."

(F) Payments for unused vacation, annual leave, personal leave, sick leave, or compensating time off, whether paid in lump sum or otherwise.

(G) Final settlement pay.

(H) Payments for overtime, including pay in lieu of vacation or holiday.

(I) Compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles, and bonuses for duties performed after the member's regular work shift.

(J) Amounts not available for payment of salaries and which are applied by the employer for any of the following:

(i) The purchase of a retirement plan which meets the requirements of Section 401(k) of Title 26 of the United States Code.

(ii) Payment into a money purchase pension plan and trust which meets the requirements of Section 401(a) of Title 26 of the United States Code.

(K) Payments made by the employer to or on behalf of its employees who have elected to be covered by a flexible benefits program, where those payments reflect amounts that exceed the employee's salary.

(L) Any other payments the board may determine are not "payrate" or "special compensation."

(5) If the provisions of this subdivision, including the board's determinations pursuant to subparagraph (F) of paragraph (2) and subparagraph (D) of paragraph (3), are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or 3560, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, those provisions may not become effective unless approved by the Legislature in the annual Budget Act. No memorandum of understanding reached pursuant to Section 3517.5 or 3560 may exclude from the definition of either "payrate" or "special compensation" a member's base salary payments or payments for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or



leave of absence. If any items of compensation earnable are included by memorandum of understanding as “payrate” or “special compensation” for retirement purposes for represented and higher education employees pursuant to this paragraph, the Department of Personnel Administration or the Trustees of the California State University shall obtain approval from the board for that inclusion.

(6) (A) Subparagraph (B) of paragraph (3) of this subdivision prescribes that compensation earnable includes any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential; and includes compensation for uniforms, except as provided in Section 20632; and subparagraph (I) of paragraph (4) excludes from compensation earnable compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobile, and bonuses for duties performed after regular work shift.

(B) Notwithstanding subparagraph (A), the Department of Personnel Administration shall determine which payments and allowances that are paid by the state employer shall be considered compensation for retirement purposes for any employee who either is excluded from the definition of state employee in Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service.

(C) Notwithstanding subparagraph (A), the Trustees of the California State University shall determine which payments and allowances that are paid by the trustees shall be considered compensation for retirement purposes for any managerial employee, as defined in Section 3562, or supervisory employee as defined in Section 3580.3.

SEC. 3. Section 20816 of the Government Code is amended to read:

20816. (a) Notwithstanding any other provision of this part, all assets of an employer shall be used in the determination of the employer contribution rate for the membership comprising the basis of the computation. Assets held shall be recognized over the same funding period used to amortize unfunded accrued actuarial obligations, whether in excess of the accrued actuarial obligation or not, using the entry age normal funding method.

(b) On and after January 1, 1999, contracting agencies for which the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer employer assets to



member-accumulated contribution accounts to satisfy all member contributions required by this part. That transfer shall be over a 12-month period provided the actuarial value of assets exceeds the present value of benefits. In determining the present value of benefits and the actuarial value of assets for purposes of this part, liabilities and assets attributed to the 1959 survivor allowance may not be included. On and after January 1, 2003, a transfer of assets may not be made pursuant to this subdivision unless the member contributions of each member in a membership classification are satisfied through the transfer. An employer electing a transfer of assets pursuant to this subdivision shall satisfy the members' contributions for a period of not less than one month and not more than one year.

(c) On and after January 1, 2002, any contracting agency for which the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer from the contracting agency's employer account excess assets, as determined by the board subject to the requirements and limitations of Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), to a retiree health account established by the board, in its discretion, in the contracting agency's employer account pursuant to Section 401(h) of the Internal Revenue Code (26 U.S.C. 401(h)) for the purpose of providing health benefits to the contracting agency's retirees and their covered dependents. The board may, in its discretion, transfer excess assets from the contracting agency's employer account to that contracting agency's retiree health account within that agency's employer account, if the transfer meets the conditions of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420). The transferred assets shall be used solely for the payment of current retiree health liabilities. That qualified transfer shall be made only once each year. The board may adopt regulations necessary to implement this subdivision. Notwithstanding any other provision of law, the regulations may provide for the nonforfeiture of accrued pension benefits of participants and beneficiaries of a plan from which excess assets are transferred to the extent necessary for the transfer to meet the conditions of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), and may include any other provision necessary under Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420) or Section 401(h) of the Internal Revenue Code (26 U.S.C. Sec. 401(h)) to accomplish the purposes of this subdivision.

(d) For the purpose of this section, "employer" means any contracting agency, the state, or a school employer.



(e) The actuarial report in the annual financial report shall also express the effect upon employer contribution rates of this section and of the recognition of net unrealized gains and losses.

SEC. 4. Section 21063 is added to the Government Code, to read:

21063. A member may request a meeting, to be conducted by the member's employer, at which the employer shall explain to the member the elements of the member's past or current compensation that have been or will be reported to the board as compensation earnable. The information provided to the member at the meeting shall be provided orally and in writing and a copy of the writing shall be provided to the member for his or her records.

